



May 24, 2000

Ms. Joanna L. Harkey
Associate General Counsel
Texas Tech University
3601 4th Street, 2B141
Lubbock, Texas 79430-0001

OR2000-2060

Dear Ms. Harkey:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 135607.

Texas Tech University Health Science Center ("TTUHSC") received a request for a copy of a TTUHSC HealthNet¹ written or video course materials entitled "Legal Aspects of Trauma Treatment." You have submitted written course materials under Tab 3 and a videotape for our review. You do not contend that the written course materials are protected from disclosure, however, you argue that section 51.914 of the Education Code excepts the videotape from disclosure under the Act. We note that TTUHSC states that the requestor may view the course materials and the videotape in the library of the Spohn Kleberg Memorial Hospital in Kingsville, Texas. Additionally, TTUHSC states that if the requestor cannot view the videotape [at Spohn Kleberg Memorial Hospital], TTUHSC HealthNet will make the tape available for viewing. Gov't Code §552.221.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses confidentiality statutes such as section 51.914 of the Education Code. Section 51.914 of the Education Code provides in part:

¹You explain that HealthNet is a department of TTUHSC which handles the telecommunications aspects of medicine for the various schools of TTUHSC.

In order to protect the actual or potential value, the following information shall be confidential and shall not be subject to disclosure under Chapter 552, Government Code, or otherwise:

(1) all information relating to a product, device, or process, the application or use of such a product, device, or process, and all technological and scientific information (including computer programs) developed in whole or in part at a state institution of higher education, regardless of whether patentable or capable of being registered under copyright or trademark laws, that have a potential for being sold, traded, or licensed for a fee;

(2) any information relating to a product, device, or process, the application or use of such product, device, or process, and any technological and scientific information (including computer programs) that is proprietary information of a person, partnership, corporation, or federal agency that has been disclosed to an institution of higher education solely for the purposes of a written research contract or grant that contains a provision prohibiting the institution of higher education from disclosing such proprietary information to third persons or parties

Educ. Code § 51.914. The legislature is silent as to how this office or a court is to determine whether particular scientific information has “a potential for being sold, traded, or licensed for a fee.” *See* Open Records Decision No. 651 (1997). Furthermore, whether particular scientific information has such a potential is a question of fact that this office is unable to resolve in the opinion process. *See id.* Thus, this office has stated that in considering whether requested information has “a potential for being sold, traded, or licensed for a fee,” we will rely on a university’s assertion that the information has this potential. *See id.*

You explain that the requested videotape is copyrighted and is being sold as part of a product marketed by TTUHSC HealthNet. You state that the videotape “was produced as a continuing education credit for physicians . . . [and] has been disseminated and shown only to subscribers of the HealthNet service.” Based on these representations, we conclude that section 51.914 of the Education Code excepts the videotape from disclosure under

section 552.101 of the Act. Therefore, TTUHSC must withhold the videotape but it must release the written course materials under Tab 3.

Because we are able to make a determination under section 552.101 of the Government Code in conjunction with section 51.914 of the Education Code, we need not address your other claimed exception. See Gov't Code §552.305. This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

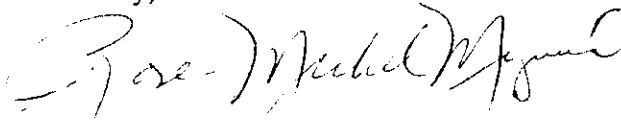
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "Rose-Michel Munguía".

Rose-Michel Munguía
Assistant Attorney General
Open Records Division

RMM/pr

Ref: ID# 135607

Encl. Submitted documents

cc: Mr. Charlie Johnson
Investigator
The Edwards Law Firm, L.L.P.
P.O. Box 480
Corpus Christi, Texas 78403-0480
(w/o enclosures)